

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOSE FRANCIS RIOS,

Plaintiff,

VS.

OFFICER TATMAN, ET AL,

Defendant.

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CIVIL ACTION NO. C-09-353

**ORDER ADOPTING MEMORANDUM AND
RECOMMENDATION TO DISMISS ACTION**

On January 22, 2010, United States Magistrate Judge Brian L. Owsley signed a Memorandum and Recommendation recommending as follows:

- 1 that plaintiff's § 1983 claims for damages be dismissed for failure to state a claim and as frivolous; see 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1);
- 2 that to the extent plaintiff raised any state law claims, those claims be dismissed without prejudice; and
- 3 that because this is a dismissal pursuant to 28 U.S.C. § 1915(g) (a "strike" for frivolous filing), that the Court instruct the Clerk to provide copies of the dismissal order to the parties, to the TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, Fax number (512) 936-2159, and to the District Clerk for the Eastern District of Texas, Tyler Division, 211 WSeest Ferguson, Tyler, Texas 75702, Attention: Betty Parker.

A copy of the Memorandum and Recommendation was mailed to petitioner with a card to be returned indicating his receipt of the mailing. The card has not been returned by plaintiff nor has the mailing been returned by the U.S. Post Office as undeliverable.

Therefore, seeing no objection to this recommendation by either party and having now reviewed the recommendation, this Court hereby adopts as its own the Memorandum and Recommendation as the decision of the Court. Accordingly, it is ORDERED as follows:

1. plaintiff's § 1983 claims for damages are dismissed for failure to state a claim and as frivolous;
2. to the extent plaintiff raised any state law claims, those claims are dismissed without prejudice; and
3. because this is a dismissal pursuant to 28 U.S.C. § 1915(g) (a "strike" for frivolous filing), the Court shall instruct the Clerk to provide copies of this dismissal order to the parties, to the TDCJ-Office of the General Counsel, P.O. Box 13084, Austin, Texas, 78711, Fax number (512) 936-2159, and to the District Clerk for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas 75702, Attention: Betty Parker.

The clerk shall enter this order and provide a copy to all parties.

SIGNED and ORDERED this 20th day of April, 2010.


Janis Graham Jack